

FLORENCE KAMARA
(ADMINISTRATRIX OF THE ESTATE OF MOSES SAIDU
KAMARA (DECEASED) - INTESTATE - APPELLANT

AND

UMU KAMARA
ALUSENI KAMARA - RESPONDENTS
JELLCATU KAMARA (AN INFANT BY UMU KAMARA
HER GUARDIAN, AD LITEM).

J U D G M E N T

By Lords,

This appeal is from a Judgment in a Civil Action by
Originating Summons dated 28th June, 1986 in the High Court intitled

C.C. 533/86 1986 K. NO. 389

IN THE HIGH COURT OF SIERRA LEONE
IN THE ESTATE OF MOSES SAIDU KAMARA
(DECEASED) INTESTATE.

BETWEEN: FLORENCE KAMARA - (ADMINISTRATRIX OF THE
ESTATE OF MOSES SAIDU KAMARA, DECEASED, INTESTATE
- PLAINTIFF

AND

1. UMU KAMARA
2. ALUSINE KAMARA
3. ISATU KAMARA - DEFENDANTS
4. JELLCATU KAMARA - (AN INFANT BY UMU KAMARA HER
GUARDIAN AD LITEM) - 3, FINDLAY LANE, FREETOWN.

This Civil Suit has, to say the least, had a chequered history. The plaintiff, Florence Kamara, died on the 5th day of May, 1987, and at her death had not completed the Administration of the Estate of Moses Saidu Kamara, deceased, Intestate, her late husband. On the 15th day of August, 1988 Mrs. Esther Sankoh, the lawful sister and surviving Next-of-Kin of Florence Kamara, was granted Letters of Administration of all and singular the real and personal estate which by law devolves on and vests in the personal representative of Florence Kamara, deceased Intestate. By Order of Court dated the 15th day of December, 1988 it was ordered as follows:-

" ----- that Mrs Esther Sankoh be substituted for Mrs Florence Kamara, deceased as plaintiff in this action and that the action do continue in the name of Esther Sankoh as plaintiff against all the defendants and that the costs of this application be met from the estate of Moses Kamara, deceased."

On the 6th day of February, 1990, the Court delivered its Judgment in the said Originating Summons. The Judgment is as follows:

C.C. 533/86 1986 K. NC. 89
IN THE HIGH COURT OF SIERRA LECNE
IN THE ESTATE OF MOSES SAIDU KAMARA (DECEASED) INTERSTATE
BETWEEN: FLORENCE KAMARA
(ADMINISTRATRIX OF THE ESTATE OF MOSES SAIDU KAMARA
(DECEASED) - INTERSTATE. - PLAINTIFF

AND

UMU KAMARA

ALUSINE KAMARA

JELICATU KAMARA - (AN INFANT BY UMU KAMARA HER
GUARDIAN ADLITEM) - DEFENDANTS

TUESDAY THE 6TH DAY OF FEBRUARY, 1990

BEFORE THE HONOURABLE MR. JUSTICE N. D. ALIADI - JUDGE

This matter coming up for hearing on divers dates before the Court and this day for Judgment in the presence of Dr. A.S. Marcus Jones of Counsel for the plaintiff and C. A. Osho-Williams, Esquire of Counsel for the defendants.

And Upon reading the Summons and various affidavits filed herein:
IT IS THIS DAY ORDERED AS FOLLOWS:-

1. That the premises 3 & 3A Findlay Lane, Off Wilkinson Road be sold by Private Treaty.
2. That the Solicitor of the plaintiff and the defendants have conduct of the sale.
3. That one-half of the proceeds of sale be paid to the plaintiff to hold as Trustee for the Estate of Florence Kamara (deceased)
4. That the other half be paid to the defendants to be distribute among them equally.
5. That one-fourth share of the 4th defendant be held by the 1st defendant as Trustee for the 4th defendant.
6. That the costs of these proceedings be paid equally to the Solicitors of the parties out of the estate.

BY THE COURT
SGD: A. SLOWERS

On the 8th day of May, 1991, the Court ordered that execution of the Judgment of the 6th February, 1990 be stayed until further order.

On the 7th day of February, 1992, the Court ordered as follows:-

"IT IS THIS DAY ORDERED that the orders of this Court dated

15th December, 1988 and 6th February, 1990 be set aside and that the costs of this application be paid by the plaintiff to the defendants."

It is against this order of the High Court, dated the 7th day of February, 1992, that the Appellant has come to this Court, for redress. In the Notice of Appeal, the Appellant complained that the Learned Trial Judge was wrong in Law in setting aside the order of the 15th December, 1988, and the Judgment dated 6th February, 1990. As for the order of the 15th December, 1988, the Appellant says that Esther Sankoh, having obtained Letters of Administration of the estate of Florence Kamara, her sister, was competent to inherit the mantle of Florence Kamara, as administratrix of the estate of Moses Saidu Kamara her late husband. This Court finds no merit in this contention by the appellant. Florence Kamara instituted the action, supra, in a representative capacity, as administratrix of the estate of her late husband. On her death her office as such is extinguished. This is not a situation in which there is a chain of representation. On the death of a sole, as in this case, or last surviving administrator, the Court must, in order to constitute a representative to the original deceased, make in all cases a grant de bonis non. The chain of representation is not continued as it is where a sole or last surviving executor dies leaving an executor who proves his will. Esther Sankoh, the administratrix of the estate of Florence Kamara is only commissioner to administer the effects of Florence Kamara, and not that of Moses Saidu Kamara. Fresh Administration should have been commissioned of the goods of Moses Saidu Kamara not administered by Florence Kamara before her death. The reason for this distinction between the situation where a sole or last surviving executor dies leaving an executor who proves his will and that where a sole or last surviving administrator dies is well explained by Blackstone in the 1st Edition of the 2nd Volume of his Commentaries at Page 506.

"The Power of an executor is founded upon the special confidence and actual appointment of the deceased; and such executor is therefore allowed to transmit that power to another, in whom the deceased has reposed no trust at all; and, therefore, on the death of that officer, it results back to the ordinary to appoint another. And, with regard to the Administrator of A's executor he has clearly no privity or relation to A; being only commissioned to administer the effects of the intestate executor, and not of the original testator -----." It was not however, within the competence of the Court below to set aside its own order of the 15th December, 1988, substituting Mrs Esther Sankoh, the administratrix of the Estate of Florence Kamara, as

plaintiff in the action. That should have been left for review by a higher Court. The appellant also contends that the Learned Trial Judge was wrong in Law in setting aside the Judgment dated 6th February, 1990, as that was a final Judgment. This Court agrees with the appellant.

This Court having found that Esther Sankoh was not a competent person to be substituted for the deceased, Florence Kamara, as Administratrix of the Estate of Moses Saidu Kamara, the plaintiff in the Action, the action commenced by Originating Summons, Supra, abated with the death of Florence Kamara on the 5th day of May, 1987. All proceedings after that date are a nullity. Such proceedings include the Order dated 15th December, 1988, and the Judgment dated 6th February, 1990. The records reveal that at least one alleged beneficiary, of the estate of Moses Saidu Kamara, Marie Kamara, had no knowledge of the proceedings in the Court below. Section 21 (1) of the Administration of Estates Act. Cap. 45 of the Laws of Sierra Leone reads:-

"No land forming part of the estate of an Intestate shall be sold by the official Administrator or any Administrator without the consent of all persons beneficially interested, or the order of the Court or Judge thereof for that purpose first obtained."

The words of Section 21 (1) Supra, are clear and unambiguous. The claim of Marie Kamara, alleged daughter of the deceased ought to be investigated and determined. For the purpose of determining the real question in controversy between all the interested parties this Court remits this case to the Court below to be reheard. It is so ordered. There shall be no order as to costs.

A. N. Binkley
 Secretary
 Substantively